

**ASSEMBLY BILL**

**No. 677**

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**Introduced by Assembly Member Solorio**

February 25, 2009

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An act to amend Section 1720 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 677, as introduced, Solorio. Public works: prevailing wages.

Existing law defines “public works,” for purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds.

This bill would make technical, nonsubstantive changes in these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1720 of the Labor Code is amended to  
2     read:  
3     1720. (a) As used in this chapter, “public works” means:  
4     (1) Construction, alteration, demolition, installation, or repair  
5     work done under contract and paid for ~~in whole~~ *wholly* or ~~in part~~  
6     *partly* out of public funds, except work done directly by any public  
7     utility company pursuant to order of the Public Utilities  
8     Commission or other public authority. For purposes of this  
9     paragraph, “construction” includes work performed during the

1 design and preconstruction phases of construction including, but  
2 not limited to, inspection and land surveying work.

3 (2) Work done for irrigation, utility, reclamation, and  
4 improvement districts, and other districts of this type. “Public  
5 work” does not include the operation of the irrigation or drainage  
6 system of any irrigation or reclamation district, except as used in  
7 Section 1778 relating to retaining wages.

8 (3) Street, sewer, or other improvement work done under the  
9 direction and supervision or by the authority of any officer or  
10 public body of the state, or of any political subdivision or district  
11 thereof, whether the political subdivision or district operates under  
12 a freeholder’s charter or not.

13 (4) The laying of carpet done under a building lease-maintenance  
14 contract and paid for out of public funds.

15 (5) The laying of carpet in a public building done under contract  
16 and paid for in whole or in part out of public funds.

17 (6) Public transportation demonstration projects authorized  
18 pursuant to Section 143 of the Streets and Highways Code.

19 (b) For purposes of this section, ~~“paid for in whole or in part~~  
20 *“wholly or partly out of public funds”* means all of the following:

21 (1) The payment of money or the equivalent of money by the  
22 state or political subdivision directly to or on behalf of the public  
23 works contractor, subcontractor, or developer.

24 (2) Performance of construction work by the state or political  
25 subdivision in execution of the project.

26 (3) Transfer by the state or political subdivision of an asset of  
27 value for less than fair market price.

28 (4) Fees, costs, rents, insurance or bond premiums, loans, interest  
29 rates, or other obligations that would normally be required in the  
30 execution of the contract, that are paid, reduced, charged at less  
31 than fair market value, waived, or forgiven by the state or political  
32 subdivision.

33 (5) Money loaned by the state or political subdivision that is to  
34 be repaid on a contingent basis.

35 (6) Credits that are applied by the state or political subdivision  
36 against repayment obligations to the state or political subdivision.

37 (c) Notwithstanding subdivision (b):

38 (1) Private residential projects built on private property are not  
39 subject to the requirements of this chapter unless the projects are

1 built pursuant to an agreement with a state agency, redevelopment  
2 agency, or local public housing authority.

3 (2) If the state or a political subdivision requires a private  
4 developer to perform construction, alteration, demolition,  
5 installation, or repair work on a public work of improvement as a  
6 condition of regulatory approval of an otherwise private  
7 development project, and the state or political subdivision  
8 contributes no more money, or the equivalent of money, to the  
9 overall project than is required to perform this public improvement  
10 work, and the state or political subdivision maintains no proprietary  
11 interest in the overall project, then only the public improvement  
12 work shall thereby become subject to this chapter.

13 (3) If the state or a political subdivision reimburses a private  
14 developer for costs that would normally be borne by the public,  
15 or provides directly or indirectly a public subsidy to a private  
16 development project that is de minimis in the context of the project,  
17 an otherwise private development project shall not thereby become  
18 subject to the requirements of this chapter.

19 (4) The construction or rehabilitation of affordable housing units  
20 for low- or moderate-income persons pursuant to paragraph (5) or  
21 (7) of subdivision (e) of Section 33334.2 of the Health and Safety  
22 Code that are paid for solely with moneys from a Low and  
23 Moderate Income Housing Fund established pursuant to Section  
24 33334.3 of the Health and Safety Code or that are paid for by a  
25 combination of private funds and funds available pursuant to  
26 Section 33334.2 or 33334.3 of the Health and Safety Code do not  
27 constitute a project that is paid for in whole or in part out of public  
28 funds.

29 ~~(5) "Paid for in whole or in part out of public funds" does not~~  
30 ~~include tax credits provided pursuant to Section 17053.49 or 23649~~  
31 ~~of the Revenue and Taxation Code.~~

32 ~~(6)~~

33 (5) Unless otherwise required by a public funding program, the  
34 construction or rehabilitation of privately owned residential projects  
35 is not subject to the requirements of this chapter if one or more of  
36 the following conditions are met:

37 (A) The project is a self-help housing project in which no fewer  
38 than 500 hours of construction work associated with the homes  
39 are to be performed by the homebuyers.

1 (B) The project consists of rehabilitation or expansion work  
2 associated with a facility operated on a not-for-profit basis as  
3 temporary or transitional housing for homeless persons with a total  
4 project cost of less than twenty-five thousand dollars (\$25,000).

5 (C) Assistance is provided to a household as either mortgage  
6 assistance, downpayment assistance, or for the rehabilitation of a  
7 single-family home.

8 (D) The project consists of new construction, or expansion, or  
9 rehabilitation work associated with a facility developed by a  
10 nonprofit organization to be operated on a not-for-profit basis to  
11 provide emergency or transitional shelter and ancillary services  
12 and assistance to homeless adults and children. The nonprofit  
13 organization operating the project shall provide, at no profit, not  
14 less than 50 percent of the total project cost from nonpublic  
15 sources, excluding real property that is transferred or leased. Total  
16 project cost includes the value of donated labor, materials,  
17 architectural, and engineering services.

18 (E) The public participation in the project that would otherwise  
19 meet the criteria of subdivision (b) is public funding in the form  
20 of below-market interest rate loans for a project in which  
21 occupancy of at least 40 percent of the units is restricted for at  
22 least 20 years, by deed or regulatory agreement, to individuals or  
23 families earning no more than 80 percent of the area median  
24 income.

25 (d) Notwithstanding any provision of this section to the contrary,  
26 the following projects shall not, solely by reason of this section,  
27 be subject to the requirements of this chapter:

28 (1) Qualified residential rental projects, as defined by Section  
29 142 (d) of the Internal Revenue Code, financed in whole or in part  
30 through the issuance of bonds that receive allocation of a portion  
31 of the state ceiling pursuant to Chapter 11.8 ~~of Division 4~~  
32 (commencing with Section 8869.80) *of Division 1 of Title 2* of the  
33 Government Code on or before December 31, 2003.

34 (2) Single-family residential projects financed in whole or in  
35 part through the issuance of qualified mortgage revenue bonds or  
36 qualified veterans' mortgage bonds, as defined by Section 143 of  
37 the Internal Revenue Code, or with mortgage credit certificates  
38 under a Qualified Mortgage Credit Certificate Program, as defined  
39 by Section 25 of the Internal Revenue Code, that receive allocation  
40 of a portion of the state ceiling pursuant to Chapter 11.8 ~~of Division~~

1 ‡ (commencing with Section 8869.80) of *Division 1 of Title 2* of  
2 the Government Code on or before December 31, 2003.

3 (3) Low-income housing projects that are allocated federal or  
4 state low-income housing tax credits pursuant to Section 42 of the  
5 Internal Revenue Code, Chapter 3.6 of ~~Division 31~~ (commencing  
6 with Section 50199.4) of *Part 1 of Division 31* of the Health and  
7 Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue  
8 and Taxation Code, on or before December 31, 2003.

9 (e) If a statute, other than this section, or a regulation, other than  
10 a regulation adopted pursuant to this section, or an ordinance or a  
11 contract applies this chapter to a project, the exclusions set forth  
12 in subdivision (d) do not apply to that project.

13 (f) For purposes of this section, references to the Internal  
14 Revenue Code mean the Internal Revenue Code of 1986, as  
15 amended, and include the corresponding predecessor sections of  
16 the Internal Revenue Code of 1954, as amended.

17 (g) The amendments made to this section by either Chapter 938  
18 of the Statutes of 2001 or the act adding this subdivision shall not  
19 be construed to preempt local ordinances requiring the payment  
20 of prevailing wages on housing projects.